

Amendment
Administrative Order On Consent For Removal Activities Embankment and Area 5106
EPA Docket No. 10-97-0011-CERCLA

Occidental Chemical Corporation (“Occidental”), the United States Environmental Protection Agency (“EPA”), and the Washington Department of Ecology (“Ecology”) agree to amend the Administrative Order on Consent for Removal Activities Embankment and Area 5106, EPA Docket No. 10-97-0011-CERCLA (“AOC”) pursuant to Paragraph 98 of the AOC as follows.

This amendment reflects agreement amongst EPA, Ecology, and Occidental that A) additional site characterization needs to be conducted, both in upland areas and beneath the Hylebos Waterway, to adequately determine the nature and extent of soil, ground water, surface water, and sediment contamination; B) feasible alternatives to address remaining contamination of all media need to be developed and evaluated; and C) an integrated remedy or set of remedies needs to be selected and designed which will satisfy EPA and Ecology requirements under CERCLA, MTCA, and RCRA. Accordingly, the attached SOW includes the CERCLA remedial process elements of RI/FS, RD, and interim response actions.

1. Pursuant to Paragraph 40 of the AOC, Occidental shall implement the attached Statement of Work (“SOW”). The SOW is attached to this Amendment as Attachment A and provides for environmental investigation, alternatives analyses, interim response actions to address pH contaminated groundwater, response action selection, and remedial design. All work plans, schedules and other tasks required by the SOW shall be performed pursuant to the terms and conditions of the AOC and subject to approval by EPA and/or Ecology. In addition, all work plans, schedules and other tasks required by the SOW shall be conducted consistent with the Model Toxics Control Act (“MTCA”), Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”).
2. EPA and Ecology have entered into a Memorandum of Understanding (“MOU”) that provides a framework for coordination and cooperation between the two agencies. The MOU designates the “lead agency” for particular activities that will be performed pursuant to this Amendment, and explains how decision-making responsibilities will be allocated. EPA and Ecology expect that implementation and oversight of this Amendment will be consistent with the MOU. Nothing in this Amendment is intended to provide Occidental or any other third-party with any rights or obligations regarding the MOU.
3. Until the AOC, as amended, is superseded by another legal mechanism (e.g., a consent decree) requiring implementation of recommended alternatives to be developed under the SOW, Occidental shall continue to maintain and operate the Groundwater Treatment System according to the current Corrective Action Plan and current Corrective Action Monitoring Plan which has been developed under

the expired RCRA permit No. WAD00924314. Occidental shall continue to monitor and report hydraulic responses of injection and extraction wells according to the procedures and schedule specified in the Corrective Action Monitoring Plan. Occidental shall continue to redevelop or replace injection and extraction wells with new wells as necessary according to the criteria specified in the Corrective Action Monitoring Plan.

4. The definition of the Site contained in Paragraph 1 of the AOC shall be changed to the following:

The Site shall mean that portion of segment 5 of the Mouth of the Hylebos Waterway Problem Area and those portions of the upland properties described in the next sentence where Waste Materials have or may come to be located as a result of releases or threatened releases of Waste Materials from operations related to the production, processing, formulation or disposal of chemical materials or products. Accordingly, the Occidental Site shall include, but not be limited to the following: Area 5106; the Occidental Embankment Area; the Pioneer Property located at 605 Alexander Avenue; locations of groundwater contaminant plumes and contaminated sediments on the Port of Tacoma property located at 401 Alexander Avenue to the north of the Pioneer Property; locations of contaminated sediments and groundwater contaminant plumes on the Mariana Properties property located at 709 Alexander Avenue and the Port of Tacoma property located at 721 Alexander Avenue to the south of the Pioneer Property; and other areas of Segment 5 of the Mouth of the Hylebos Waterway Problem Area where releases of Waste Materials from such properties have come to be located and those areas necessary to stage or implement related work. The Occidental Site does not include the release of total petroleum hydrocarbon, BTEX or other constituents of concern from petroleum product storage operations currently or historically located on the 709 Alexander Avenue property or 721 Alexander property which has been identified in shallow groundwater underlying the 709 Alexander Avenue property or the 721 Alexander property and determined to be moving towards the Blair Waterway. Attachment B to this Amendment is a map that generally depicts the Site.

5. Ecology shall be added as a party to the AOC. Ecology shall have the authority to enforce the terms and conditions of the AOC as appropriate as such relate to the work performed pursuant to this Amendment. The terms and condition of the AOC applicable to EPA shall be applicable to Ecology.
6. Consistent with Section XVIII of the AOC ("Stipulated Penalties"), Ecology shall also have the authority to assess and collect stipulated penalties. However, in no event will Occidental be required to pay duplicative stipulated penalties to EPA and Ecology. Payments of stipulated penalties owed, if any, to the State shall be mailed to the Department of Ecology, Cashiering Section, P.O. Box 5128, Lacey,

WA 98509-5128.

7. Consistent with Section XX of the AOC (“Reimbursement of and Oversight Response Costs”), Occidental shall also reimburse the State for all response costs paid or incurred by the State in connection with this Amendment. Occidental shall pay the required amount of such response costs within thirty (30) days of receiving from Ecology an itemized statement of such costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of the work pertinent to such costs will be provided if requested by Occidental. Ecology will prepare and provide Occidental with itemized statements on a quarterly basis. In addition, within ninety (90) days of the effective date of this Amendment, Occidental shall pay the State \$458,259.17 in reimbursement of response costs that the State has incurred in connection with the Occidental Site prior to June 30, 2004. Failure to pay response costs within thirty (30) days of receipt of the itemized statement will result in interest charges in accordance with WAC 173-340-550. All payments owed to the State pursuant to this Amendment will be sent to the Department of Ecology, Cashiering Section, P.O. Box 5128, Lacey, WA 98509-5128.
8. Consistent with Section XVII of the AOC (“Dispute Resolution”), in the event that Occidental objects to notification provided by or action undertaken by Ecology, the Section Supervisor for Hazardous Waste and Toxic Reduction for the Southwest Regional Office shall resolve the initial dispute related to such objection. Any subsequent and timely written appeal of such initial dispute decision shall be resolved by the Program Manager of Ecology’s Hazardous Waste and Toxics Reduction Program.
9. The Unilateral Administrative Order (Area 5106), EPA Docket No. CERCLA 10-2002-0066 (the “UAO”) is hereby terminated. Remaining additional response actions, required by EPA on March 25, 2003 under authority of the UAO, have been incorporated into the attached Occidental Site SOW. Occidental reserves any defenses it may have to any subsequent action brought by EPA, except for those based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claims-splitting, or other defenses based upon any contention that the claims raised by EPA in the subsequent proceeding are barred by the termination of the UAO
10. Ecology Enforcement Order DE 95TC-S242, issued to PRI Northwest, Inc. and Occidental Chemical Corporation, effective September 5, 1995, is held in abeyance until a consent decree or administrative order implementing the selected remedies for the Mariana property takes effect.
11. Unless expressly modified by this Amendment, the terms and conditions of the AOC shall apply to all work or other activities required by the Amendment.

12. The AOC as modified by this Amendment contains the entire agreement between EPA, Ecology and Occidental. No statements, promises or inducements made by any party or its representatives that are not contained in this Amendment shall be valid or binding.

Occidental, EPA and Ecology have executed this document to signify their agreement to the foregoing effective as of the date of EPA's execution as set forth below. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one the same instrument.

AGREED for Occidental Chemical Corporation

By:_____

Name:_____

Title:_____

Date:_____

AGREED for Washington Department of Ecology

By:_____

Name:_____

Title:_____

Date:_____

AGREED for United States Environmental Protection Agency

By:_____

Name:_____

Title:_____

Date:_____